

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

All Cases

MDL No. 2804
Case No. 17-md-2804
Judge Dan Aaron Polster

CORRECTED PHARMACY DEFENDANTS' JOINDER IN NOTICE OF POSITION

Pharmacy Defendants¹ respectfully submit this notice of their joinder in the Certain Defendants' Notice of Position Regarding Evidentiary Orders of December 26, 2019 and January 3, 2020 filed on January 31, 2020 (Dkt. #3133). Pharmacy Defendants reserve all objections and rights identified by the other defendants. Moreover, with the exception of Walgreens, Pharmacy Defendants had been severed (Kroger had been dismissed) from the Track One *Summit* and *Cuyahoga County* cases at the time the motions in limine were briefed and decided. In addition to the deficiencies noted by the other defendants, Pharmacy Defendants cannot be bound by orders on which they had no opportunity to be heard and which did not involve the dispensing claims of Track One-B.²

¹ "Pharmacy Defendants" are CVS Rx Services, Inc., CVS Indiana, L.L.C., CVS Pharmacy Inc., and Ohio CVS Stores, LLC ("CVS"), Rite Aid of Maryland, Inc., d/b/a Mid-Atlantic Customer Support Center, Rite Aid of Ohio, Inc., and Rite Aid Hdqtrs. Corp. ("Rite Aid"), Walgreen Co. and Walgreen Eastern Co. ("Walgreens"), HBC Service Company, an unincorporated operating division of Giant Eagle, Inc. ("Giant Eagle"), Discount Drug Mart ("DDM"), Walmart Inc. ("Walmart"), and The Kroger Co., Kroger Limited Partnership I, and Kroger Limited Partnership II ("Kroger").

² Nor have Pharmacy Defendants had the opportunity to seek further consideration or reexamination of the Court's interlocutory evidentiary rulings in the context of trial and the actual presentation of evidence. *See In re Air Crash Disaster*, 86 F.3d 498, 518 (6th Cir. 1996) ("It is well established that the interlocutory orders and rulings made pre-trial by a district judge are subject to modification by the district judge at any time prior to final judgment[.]") (quoting *In re "Agent Orange" Prod. Liability Litig.*, 733 F.2d 10, 13 (2d Cir. 1984)).

Dated: February 6, 2020

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 6, 2020, the foregoing was served via the Court's ECF filing system to all counsel of record.

/s/ Kelly A. Moore